IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4079 OF 2006

Shri Dwarkanath Dharamdas Shah ...Applicant
V/s.
State of Maharashtra & Anr. ...Respondents

Ms.Kokila Karla for the Applicant.
Mr.Y.M. Nakhawa, APP for State.

CORAM : V.M. KANADE, J.

DATED : SEPTEMBER 13, 2007

P.C. :-

. Heard the learned Counsel for the applicant.

2. The applicant has filed this application seeking direction from this Court for initiating inquiry against respondent no.2 under Section 340 of the Cr.P.C. for having committed an offence punishable under Section 191, 199 and 200 of the IPC. The applicant is a Chartered Accountant and respondent no.2 is an Advocate by profession.

3. It is the case of the applicant herein that during the court proceedings which was filed in this Court in Writ Petition No.305/96, the respondent no.2

appeared in person and made a statement that the suit which was pending in the trial Court was disposed of and as such, the writ petition was no longer maintainable. Accepting this statement by the respondent no.2, Division Bench of this Court on 22nd March, 2006 was pleased to dispose of the writ petition on the ground that it had become infructuous. It is the case of the applicant herein that when the applicant came to know about the said order, sought review of the said order on the ground that though initially an order was passed by the Civil Court on 15th October, 2003 whereby the application at Exhibit 52 was rejected and the suit was dismissed on the ground of abatement against defendant nos.1, 2 and 3 and thereafter, on 15th October, 2003, the trial Court clarified that the suit was dismissed on the ground of abatement only against defendant no.1.

4. It is submitted that though the respondent no.2 was aware of this subsequent order which was passed on 15th October, 2003, made incorrect statement in this Court on 22nd March, 2006 and therefore, had committed the said offence under Section 191 etc. of the IPC. It

was submitted that thereafter, in the revision application on affidavit was filed by respondent no.2 stating therein that the said statement was inadvertently made. It is submitted that the respondent no.2 was an Advocate who appeared in person and had knowledge about the said facts of restoration of suit and as such, as a result of false statement which was made by respondent no.2, serious injury was caused to the applicant herein and as such, therefore, he submitted that the inquiry be made and complaint be filed against respondent no.2

5. It is not possible to accept the submission made by the applicant. It is no doubt true that the record indicates that though suit was dismissed on account of abatement by order dated 15th October,2003, thereafter it was restored and the order of abatement was restricted only to abatement against defendant no.1. In my view, it cannot be said that merely because of the said statement made by the respondent no.2, a deliberate false statement was made by him. Knowledge of existence of the said facts of restoration of the suit cannot be

attributed to the respondent no.2. Therefore, it is not the case where action could be taken under Section 342 of the Cr.P.C. The said provision gives discretion to the Court and it is open to the Court to exercise the said discretion in the facts and circumstances of each case. In my view, in view of the nature of controversy between the parties, it is not a fit case where inquiry under Section 340 should be conducted against respondent no.2. It is an admitted position that in the review petition which was filed by the applicant, the respondent no.2 did accept his mistake and submitted that the said statement was made inadvertently.

. Under the circumstances, Criminal Application is dismissed.

(V.M. KANADE, J.)